(1) Copy

156A | 2946

FILED
1990 AUG 17 PM 3:40
GEORGE L. ROOKER, CLERK
D. Sullock D.C.

IN THE PROBATE COURT OF DAVIDSON COUNTY, TENNESSEE

CLE OTIS SMITH,
720 Fesslers Lane
Nashville, Tennessee
Plaintiff/Counterdefendant,

vs

No. 89D-4228

PHYLLIS B. SMITH,
1009 Southside Avenue
Nashville, Tennessee 37203
Defendant/Counterplaintiff.

FINAL DECREE OF DIVORCE

This cause came to be heard on the 17th day of August, 1990, before the Honorable James R. Everett, Jr., Judge of the Probate Court of Davidson County, Tennessee, upon the Complaint For Absolute Divorce filed by the Plaintiff, CLE OTIS SMITH; Answer and Countercomplaint having been filed by the Defendant, PHYLLIS B. SMITH, with the parties in for the Plaintiff to withdraw his original Complaint and Response to the Countercomplaint for the purpose of allowing the Defendant, PHYLLIS B. SMITH, to proceed upon her Countercomplaint as a uncontested matter; a Marital Dissolution Agreement having been filed; testimony from Phyllis B. Smith heard in open Court; statements from counsel for PHYLLIS B. SMITH and the record in its entirety from all of which the Court finds that the parties have suffered irreconcilable differences.

It is, therefore, **ORDERED, ADJUDGED AND DECREED** that the Defendant, PHYLLIS B. SMITH, is hereby awarded an absolute divorce from the Plaintiff, CLE OTIS SMITH, upon the grounds of irreconcilable differences and each party shall be restored to all the rights and privileges of unmarried persons.

It further appears to the Court that the parties hereto have made adequate and sufficient provision by written agreement for the equitable settlement of all property rights between the parties; and further, that they have made adequate and sufficient provision for the custody and support of the minor children at this time. The Court further finds that the ordinary child support is in compliance with the child support guidelines. The Court hereby approves the Marital Dissolution Agreement and the same is incorporated in words and figures as follows:

BILL GARRETT, Davidson County
Trans:T20160050707 DEEDDIV
Recvd: 06/15/16 12:34 10 pgs
Fees:52.00 Taxes:0.00
20160615-0060600

Copy

FILED
1990 AUG 17 PM 3:40
GEORGE L. BOOKER, CLERK
By: D.C.

IN THE PROBATE COURT OF DAVIDSON COUNTY, TENNESSEE

CLE OTIS SMITH,
Plaintiff/Counterdefendant,

vs

PHYLLIS B. SMITH,
Defendant/Counterplaintiff.

No. 89D-4228

MARITAL DISSOLUTION AGREEMENT

This agreement entered into by and between CLE OTIS SMITH, hereinafter called, "Husband", and PHYLLIS B. SMITH, hereinafter called, "Wife", subject to the foregoing premises, terms and conditions:

WITNESSED:

WHEREAS, the parties have experienced marital difficulties in the past with the result that the Husband instituted divorce proceedings against the Wief on the 30th day of November, 1989, in the Probate Court of Davidson County, Tennessee, Civil Action number 89D-4228, and:

WHEREAS, it is the decision of the parties insofar as they are able without the concurrence of the Court to amicably settle their differences with respect to all property rights, support obligations, child support rights and to enter into a contract for a settlement of such rights and obligations, not only for the present, but for the future, it being their intention that such contract will be effective with respect to all their property and other matters of concern irrespective of whether a divorce is finally concluded between the parties.

NOW, THEREFORE, for and in consideration of the foergoing premises and in consideration of the mutual convenances and agreements herein contained, the parties agree as follows:

1. **CUSTODY, CHILD SUPPORT AND VISITATION** - The Wife shall be granted the sole care, custody and control of the parties' three (3) minor children, to wit: Jevis Smith (d/o/b: Febraury 18, 1979), Saraia Smith (d/o/b: February 2, 1984) and Christy Smith (d/o/b: July 18, 1985). The Husband shall be granted visitation privileges and parenting time with the minor children on alternating weekends from Friday at 6:00 p.m. through Sunday at 6:00 p.m. beginning March 30, 1990. He shall further be granted visitation privileges and parenting time with the children every Wednesday evening from 5:30 p.m. through 8:30 p.m.; every Father's Day (with the Wife having possession of the children every Mother's Day) and alternating all other federally recognized holidays (Easter, Memorial Day, 4th of July, Labor Day and Thanksgiving)

Copy

with the Husband having his first holiday visitation on Memorial Day, 1990. The Husband shall have further visitation privileges and parenting time with the children from one (1) week prior to Christmas through 10:00 p.m. Christmas Eve, 1990 and then from 10:00 p.m. through one (1) Christmas Eve through one (1) week subsequent to Christmas in 1991 and this method of Christmas visitation shall continue to alternate each year thereafter. The Husband shall have summertime visitation and parenting with the minor children for two (2) full weeks during the summer months (June, July and August) with said two (2) week periods being at the election of the Husband upon reasonable notice to the Wife.

For the purpose of carrying out his visitation privileges, the Husband shall pick up and deliver the children back to the Wife's residence. However, the Husband shall not be bound by this paragraph in the event the residence of the Wife and children is changed from Davidson County, Tennessee or its adjacent counties to any other location.

To aid in the support and maintenance of the minor children the Husband shall pay directly to the Wife ordinary child support in the amount of one hundred twenty-five dollars and seventy-eight cents ($125.78) plus fourty-one per cent (41%) of any net overtime pay, net overtime pay being defined as gross overtime pay minus Federal withholding and FICA tax, said payments due each and every Friday beginning August 3, 1990. Said child support shall not be reduced or pro-rated pending further orders of the Court of Davidson County, Tennessee. It is further acknowledged that the aforestated ordinary child support complies with the federal guidelines.

The Wie shall carry health, hospitalization and medical insuance upon each child and the parties will equally divide any necessary medical expenses incurred on behalf fo the children not covered by said insurance to include expenses accumulated due to insurance deductable, dental, orthodontic, psychological, optical, eye glasses or extraordinary treatment, until each child reaches his/her majority. In the event that either party shall incur necessary medical expenses on behalf of the children, that party shall supply the other with a copy of the medical indebtedness within thirty (30) days of their receipt of same and the other party shall reimburse them for any expeses with they were required to pay that the insurance did not cover within thirty (30) days therafter. Failure to comply with this requirement shall be deemed a waiver of reimbursement from the other.

The Husband shall maintain all life insurance policies currently pending upon the lives of the Husband and/or Wife and/or children. In regards to the life insurance policies which insure the lives of the Husband and Wife (which has a face value of

Copy

fifty thousand dollars) the children shall be made irrevocable beneficiaries thereunder pending their minority with the Wife being made trustee on the Husband's policy and the Husband being made trustee on the Wife's policy thereby entitling said trustee to exercise any and all powers as trustee which is set forth in Section three (3) of the Chapter 110 of the Tennessee Public Acts of 1963, Tennessee Code Annotated, Section 35-50-110, to the extent applicable, all provisions and powers being herein incorporated by reference except that any trustee appointed under this section shall not have those powers set forth in sub-paragraph nineteen (19) therein. In regards to the life insurance policies insuring the lives of each child (with a face value of twenty-five thousand dollars) the Husband and Wife shall be made joint beneficiaries thereunder and the Husband and Wife agree to use the proceeds of each child's life insurance to first pay funeral expenses, administrative expenses, burial fees, and any other indebtedness directly related to that child and then if any insurance proceeds are remaining therafter the Husband and Wife shall divide same equally.

2. **REAL PROPERTY** - It is agreed and acknowledged between teh parties that they own as tenants by the entirety their homeplace located at 1009 Southside Avenue, City of Nashville, County of Davidson, State of Tennessee, 37203; said real property more particularly described as follows:

> Land in Davidson County, Tennessee, being Lot No. 64 on the plan of Section One Hundred, Edgehill Estates, of record in Book 4860, page 25, Register's Office for said County.
>
> Said Lot No. 64 fronts 50.0 feet on teh easterly margin of Southside Avenue and extends back 120.0 feet on the southerlay line to a dead line in the rear measuring 50.0 feet thereon.
>
> Being part of the same property conveyed to Metropolitan Development and Housing Agency, formerly the Nashville Housing Authority by deed from Alfred G. Rutherford, Clerk of the Circuit Court, of record in Book 4206, page 229, Register's Office for Davidson County, Tennessee.
>
> Being the same property conveyed to Cle Otis Smith and wife, Phyllis B. Smith by deed from the Metropolitan Development and Housing Agency of record in Book 7262, page 662, Register's Office of Davidson County, Tennessee.

The above described real property shall be divested from the parties as tenants by the entireties and re-invested into the Wife as the fee simple owner to be hers absolute free and clear of any claims from the Husband. Prior to the entry of the Final Decree, the Husband shall execute a quit claim deed therein conveying his interest into the Wife. The Wife shall pay the mortgage thereon and indemnify and hold harmless the Husband from payment of same.

The Wife shall be granted sole and exclusive possession in fee simple absolute of the two (2) burial plots which she shall use for the use and benefit of the children.

Copy

There is not other real property to be divided by this marital dissolution agreement.

3. **PERSONAL PROPERTY** - The Wife shall be awarded sole and exclusive possession of her 1983 Dodge ES and the Husband shall be awarded sole and exclusive possession of his 1980 Datsun.

All other items of household furniture, furnishings and personal property have heretofore been divided by the parties and each party acknowledges and ratifies the division in the household furniture, furnishings and/or personal property in the possession of either party as of the entry of the Final Decree of Divorce shall remain the property of the person possessing it.

4. **DEBTS** - The Wife shall be responsible for the payment of the indebtedness owed to Blazer Financial Company as payment for payment of the security doors on the homeplace. There are no other debts incurred jointly by the parties other than routine expenses and each party shall be responsible for any indebtedness incurred by them subsequent to the date of separation, to wit: April 15, 1987.

The assumption of the above stated indebtedness and all other indebtedness outlined in this marital dissolution agreement by each party shall be considered a duty directly related to support and maintenance of the minor children and shall not be considered dischargeable in any bankruptcy proceedings by one party against the nonbankrupt spouse nor the children so as to allow a third party creditor to claim against the nonbankrupt spouse and/or children. The parties specifically acknowledge that the above stated indebtedness was taken into consideration when negotiating the level of child support in relation to the indebtedness and their current income levels. With respect to each parties' responsibility for the payment of the abovestated indebtedness and liabilities and their obligation to hold the other harmless from payment thereof, the parties understand and agree that their obligation is in the nature of payment of ordinary child support and is a nondischargeable debt under Chapter 11 U.S.C., Section 523(5) of the Bankruptcy Code, this obligation being part of the final Court settlement of both parties regarding child support and is not a part of the division of the personal property of the marital estate.

To the extent that the above stated indebtedness, securities, or collateral requirements or mortgages for any and all the property retained by the Husband and/or Wife pursuant to the terms of this agreement, except as otherwise provided herein, the parties retaining those property items listed above shall pay such debts, securities, collateral or mortgages and be responsible for said debts or obligations and assume

Copy

and be solely responsible for paying said debts or obligations this being considered in the nature of ordinary child support and each party agrees to indemnify and hold the other party free and harmless from the payment of all claims, demands, liabilities and expenses with respect thereto, including, but not limited to reasonable attorney's fees, cost of collection and Court cost.

5. **TAX EXEMPT STATUS** - This agreement is in the transfer of appreciated property between the spouses in connection with a divorce and is not a sale or exchange or other disposition of property but is a equal division of property by co-owners.

The parties further agree that they will file individual income tax returns and that the Wife shall be entitled to claim the children as her income tax deductions.

6. **NO INTERFERENCE AND PERAMNENT RESTRAINING ORDER** - Each party shall be free from interference, authority and control, direct or indirect, by the other, as fully as if he or she were single and unmarried. Neither shall molest the other nor compel or endeavor to compel the other to co-habitate or dwell with him or her. Each party shall be **PERMANENTLY ENJOINED AND RESTRAINED** from coming about the other for the purpose of physically abusing, threatening, harassing, or intimidating in any manner the other at their residence or at any place they might be.

7. **TRIAL** - It is agreed that the Husband shall withdraw his original complaint and that the Wife shall proceed to trial upon her countercomplaint to obtain a divorce based upon the gounds of irreconcilable differences.

8. **ATTORNEY'S FEES** - Each party shall be responsible for the payment of his/her own attorney's fees and the cost incurred in connection with this matter shall be paid by the Husband.

9. **ENFORCEMENT PROVISIONS** - In the event that either party has to petition the Court to enforce any of the provisions of this agreement, then the party at fault shall be responsible fo the reasonable attorney's fees, expenses and Court costs of the enforcement of same.

10. **SEPARATE MAINTENANCE** - The parties agree that no separate maintenance, alimony or otherwise shall be paid to or by the Husband and/or Wife.

11. **PENSION BENEFITS** - Each party shall be entitled to exclusive and sole possession of their own individual retirement plans, IRAs or annuities free and clear of any claims from the other.

12. **ADDITIONAL INSTRUMENTS** - Both parties agree to sign any and all deeds, titles, documents or other instruments necessary to carry out the full intent of this agreement.

Copy

13. COMPLETE UDNERSTANDING - It is further understood that this agreement is intended to be the final settlement of all property rights of the respective paerties and is a discharge of all rights arising out of their mutual relationship as husband and wife and each party hereby waives and relinquishes to the other all rights or claims which they may have or hereinafter acquire under the law of any jurisdiction on the other's property, including without limitation, dower, courtesy, statutory allowance, homestead rights, the right to take against the other's estate, inheritance, dissent or distribution, or the right to act as administrator or executor of the other's estate, and this agreement applies to all property now owned by the Husbanb and/or Wife or to any property that either of them shall acquire in the future.

This agreement shall be binding upon and incur to the benefit of the parties hereto, their personal representatives, heirs and assigns.

It is further understood and agreed between the parties that this agreement is being entered into without undue influence, fraud, coercion, misrepresentation or for nay reason not hereinafter stated. The provisions of this agreement and its legal effect are fully known by each of the parties and each party acknowleges that it is a fair and equitable agreemetn and that it is being entered into voluntarily. this agreement contains the entire understanding of the parties and there are not representations, warranties, covenances, or undertakings other than those which are expressly set forth herein.

The parties acknowledge and understand that they have sought independent tax advise regarding the tax ramifications of this marital dissolution agreement and that neither of their respective attorneys have indicated any expertise in the tax area, nor has either party been advised by their counsel regarding any tax consequences arising out ot the marital dissoultion agreement.

The parties agree that this agreement, subject to Court approval shall be incorporated in and made part of any Final Decree of Divorce which may be entered into hereafter.

IN WITNESS WHEREOF, the parties have executed this instrument on the ____ day of June, 1990, at Nashville, Tennessee.

Copy

Phyllis B. Smith
PHYLLIS B. SMITH

STATE OF TENNESSEE)
) ss
COUNTY OF DAVIDSON)

On this the 29 day of June, 1990, before me, Linda G. Jones, a notary public in and for said county and state, appeared the within named PHYLLIS B. SMITH, with whom I am personally acquainted, stating that she has read the aforestated marital dissolution agreement and is signing same for the purposes contained therein.

Sworn to and subscribed before me on
this the 29th day of June, 1990.

Linda G Jones
NOTARY PUBLIC

My commission expires: 11-27-93

Cle Otis Smith
CLE OTIS SMITH

STATE OF TENNESSEE)
) ss
COUNTY OF DAVIDSON)

On this the 31 day of ~~June~~ July, 1990, before me, TRINA R. SCARPELLI, a notary public in and for said county and state, appeared the within named CLE OTIS SMITH, with whom I am personally acquainted, stating that he has read the aforestated marital dissolution agreement and is signing same for the purposes contained therein.

Sworn to and subscribed before me on
this the 31 day of July, ~~1989~~. 1990.

Trina R Scarpelli
NOTARY PUBLIC

My commission expires: 9/25/93
50-16

Copy

It is, further, **ORDERED** that all provisions of the Marital Dissolution Agreement are hereby approved and made the judgement of this Court. It is, further, **ORDERED** that the abovestated child support shall not be reduced or pro-rated pending further orders of the Court.

It is, further, **ORDERED** that the cost incurred in connection with this matter shall be paid by the Plaintiff, CLE OTIS SMITH, for which execution may issue if necessary.

ENTERED this the 17 day of August, 1990.

JAMES R. EVERETT, JR., JUDGE

APPROVED FOR ENTRY:

MORRIS LEVINE
Attorney for the Plaintiff
Supreme Court Registration No. 3494
1119 Stahlman Building
Nashville, Tennessee 37201
(615) 254-1616

APPROVED FOR ENTRY:

W. ALLEN BARRETT
Attorney for the Defendant
Supreme Court Registration No. 10894
ROBERT L. JACKSON & ASSOCIATES
214 Second Avenue, North
One Washington Square, Suite 103
Nashville, Tennessee 37201
(615) 256-2602
41-28

STATE OF TENNESSEE

I, RICHARD R. ROOKER, Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Order heretofore entered in the SEVENTH Circuit Court for Davidson County, Tennessee, on the 17 day of AUGUST, 1990, in Docket Number 89D4228 between SMITH, CLE OTIS, Plaintiff, and SMITH, PHYLLIS B, Defendant, as same remains of record in the Minutes of said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 07 day of JUNE in the year two thousand sixteen and in the 239th year of American Independence.

RICHARD R. ROOKER, Clerk,

By: _____
Deputy Clerk

[SEAL]

